

(b)(5), Deliberative

9/18/18

1

9/17/18 — Alex re: 9/14 phone call w: ME wqs  
Leo, Max, Dave R., Anna W., Dave F.

(b)(5), Deliberative, ACP



9/6/18 - Mike S., Jane D. re: Mike + Alex's visit to ME's

(b)(5), Deliberative



## Notes and Action Items from Regional Administrator/Indian Program Manager Maine Tribal Visits Aug 28-30, 2018

### Passamaquoddy Tribe – Indian Township (Chief William Nicholas, Martin Dana, Trevor White)

St. Croix River: Chief William Nicholas expressed concerns over the recent 530,000-gallon primary treated effluent spill from Woodland Pulp & Paper. Tribe remains concerned over this spill and two other spills in Sept 2016, since tribal members fish for sustenance in the river. The Tribe is interested in the status of the mill's ISO 14000 certification which allegedly was in place earlier. The ISO 14000 family of standards provides practical tools for companies and organizations to manage their environmental responsibilities. The Tribe is also interested in learning about the status of the mill's infrastructure rehabilitation plans and progress to preventing spills in the future, following a letter issued by the mill to DEP in Oct 2016 outlining its plans. Tribe is also frustrated that MEDEP has not communicated with the Tribe regarding the recent spillage. Tribe may be interested in a future RARE project to study fish toxicity. The mill had completed studies previously above and below the mill. Tribe is also concerned about air emissions from the mill and is interested in any reports from DEP regarding compliance with the mill's Title V air permit. Tribe is also interested in pursuing federal natural resources law enforcement training and certification including any EPA funding to support this. Tribe also mentioned the loss of tribal lands when the river was flooded, including Lewey Island.

Maine WQS: Alex provided a brief overview of the status of the water quality standards litigation status. Referring to the Apr 2018 DOI letter, Chief Nicholas stressed that any federal agency should consult with tribes before it suggests defining sustenance on behalf of the tribes. Chief also discussed how tribal sustenance fishers line up along "flowage" during fish runs.

#### Action Items:

- Alex to follow up with DEP Commissioner Jeff Mercer on the Tribe's concerns regarding the recent spillage
- Mike will coordinate with OES regarding Title V compliance and DEP reporting
- Mike will have further discussions with Tribe on potential RARE project

*Alex Rosenberg talking to  
Brian Kananough  
Tribes have been involved*

*Paul*

### Passamaquoddy Tribe – Pleasant Point (Chief Ralph Dana, Ed Bassett)

Meddybemps/Eastern Surplus Superfund Site: Remedial work continues at the site. EPA has been in discussions with MEDEP, the Tribe and various community groups about the long-term use and ownership of the property. Efforts are underway to develop community consensus and to develop a site management plan. In earlier discussions with EPA, the Tribe seemed to be open to a long-term lease option. However, during the Aug 28 site visit with Chief Ralph Dana, THPO Donald Soctomah and site caretaker Dale Mitchell, the Tribe advocated for ownership of the property, given the discovery and preservation efforts of the archaeological site, N'tolonapemk. Dale Mitchell maintains the property at his own time and expense. The Tribe's vision for this site includes opportunities for tribal ceremonial events and public education regarding the Tribe's heritage.

*Mike talking w/ OJAR*

St. Croix River: Ed Bassett provided a comprehensive overview of the St. Croix River restoration efforts, identifying each dam and the respective fish passage infrastructure. Historically, 2.6 million alewife passed through Milltown Dam. This season, 270,000 alewife passed through Milltown Dam, and only 9,000 passed through Grand Falls Dam. Tribe believes that alewife are bottlenecked at Woodland Dam, and estimates

only a 25-50% successful pass rate. Tribe believes that DEP is not holding Woodland Pulp & Paper to task, and believes that the inadequate fish passage fails the "safe and timely" standard. Tribe is also concerned about the recent spillage from WP&P, and questioned whether there was an enforcement fine placed on WP&P for this incident. Tribe was not notified by DEP of the spillage. Tribe is taking water quality samples upstream and downstream of dam. Tribe described an experimental electrical turbine replacement project at Milltown dam that in theory passes fish with less mortality, and is concerned that if the project is not successful, it could set restoration efforts back 10 years. Tribe also mentioned concerns with Vanceboro Dam, which spans the international border and incorporates fish passage controlled by Canada, and Forest City Dam, that does not have fish passage infrastructure, and which WP&P is considering relinquishing to the State of Maine.

Tribe seeks to provide alewife passage in the western branch of the river at West Grand Dam, which incorporates stepped "pools" for fish passage, but a 20-inch hydraulic jump allows for landlocked salmon to pass upstream but not alewife. Tribe relayed that a downstream fish hatchery that produces 70% of the genetic salmon strain for ME waters and the reason why alewife are prevented from passing upstream is because of a concern that sea-run alewife would introduce pathogens that may harm the salmon population, if alewife are allowed to migrate upstream. There is trust land upstream that tribal members fish from and may settle in the future. Tribe described restoration work on the Magalloway Stream, on which EPA GAP funds were used.

**Action Items:**

- *Alex will speak to MEDEP Commissioner Jeff Mercer about the Tribe's desire for property acquisition of the Meddybemps property*
- *Alex to follow up with DEP Commissioner Jeff Mercer on the Tribe's concerns regarding the recent spillage and fish passage*
- *Mike will consider the Tribe's restoration work at Magalloway Stream as a future GAP success story*
- *Mike will investigate bringing Ed Bassett to EPA for a similar presentation to EPA staff.*
- *Mike will forward a copy of Dale Mitchell's environmental merit award nomination to Chief Dana*

**Maine WQS:** Alex provided a brief overview of the status of the water quality standards litigation status. Chief Dana stressed the importance of sustenance fishing as a source of food and income for tribal members.

**Penobscot Indian Nation** (Chief Kirk Francis, John Banks, Dan Kusnierz, Mark Chavarie, Jason Mitchell, Maulian Dana)

**Maine WQS:** Alex provided a brief overview of the status of the water quality standards litigation status. John Banks discussed the Tribe's history in dealing with fishing rights and environmental concerns, including dioxins in the 1980s to present-day concerns. Cancer rates for tribal population is twice that of other Mainers. Chief Francis raised concern that if the case is remanded back to EPA, then sustenance rights would not be taken into account. John Banks mentioned a 3-volume set that an EPA employee (Jeff Bailor) compiled some years ago on fish consumption. Dan Kusnierz mentioned that the Tribe has uses in its own water quality standards that differ from the State standards, including bacteria criteria that is a seasonal criterium in the state's standards, but is year-round for PIN, to protect year-round cultural practices.

Following the meeting, the Tribe was provided a CWA 319 "big check" for a recent competitive award, and the Tribe provided a river boat tour around Indian Island.

*Action Items:*

- *Mike will research the report that John Banks referred to, and will relay the Tribe's comments to the water quality standards team.*

**Houlton Band of Maliseet Indians (Chief Clarissa Sabattis, Sharri Venno, Sue Young)**

Meduxnekeag River: Sharri Venno provided a presentation describing the restoration efforts that the Tribe has undertaken over the course of the past 20 years to restore the Meduxnekeag River, including establishing riparian buffers, installing in-stream modifications to create pooling and habitat for salmon spawning, working with local farming community to implement best practices to mitigate runoff, and completing CWA 319 project off-reservation in partnership with the Town of Houlton to improve water quality in the river. Tribe is currently conducting an eDNA study in the Meduxnekeag to establish a baseline and determine if salmon DNA is present in the water. An electrofishing exercise will take place this fall. Tribe is looking to use eDNA as a water quality standard – as a mark of a healthy ecosystem. Sharri mentioned that the Houlton Water Company's WWTF is in need of infrastructure upgrades, which would result in improved water quality in the Meduxnekeag. Mike mentioned the SRF program, and will investigate if a tribal SRF project can be used as a contribution to Houlton. Tribe believes that under the State SRF list, Houlton would not be high on the list. An upcoming DEP/EPA meeting may provide an opportunity to discuss further. Alex mentioned a project that utilized riparian buffering to cool water from effluent in lieu of chillers. Alex mentioned that the St. John/Wolostok restoration project is included in acting Administrator Andrew Wheeler's briefing materials for an upcoming Sept 18 meeting with ECCC Premier McKenna.

Grants Issues: Mike Stover mentioned that the Region is continuing to investigate the Healthy Communities vehicle as a "common app" or "one stop shop" pilot for incorporating other federal agency funding for projects. The national PPG Evaluation workgroup continues to meet. Sharri suggested having a report-out during the upcoming tribal conference. Tribe is using radon funding to hold a workshop in late September, along with a pesticides workshop. Tribe is aware of current cash flow problem with older PPG expiring at the end of September. Tribe expects funds to be obligated but not "cashed" since the funding is primarily for travel expenses for Radon workshop participants. Tribe may need to apply for a waiver. Tribe is interested in pursuing Environmental Education grants. It appears feasible that the Tribe can partner with a local public school to become eligible to apply for the grant. Tribe's vision is to partner with Houlton School District to incorporate a pre-K thru 12 curriculum. Kristen Conroy can assist the Tribe in preparation with next spring's grant solicitation (due Apr 11 2019). EPA can send the Tribe information on Swinomish Nation recent award and other R1 awards

Maine WQS: Alex provided a brief overview of the status of the water quality standards litigation status. Tribe commented that it was not DOI's purview to comment on the Wabanaki study in its April 2018 letter.

*Action Items:*

- *Alex to provide contact information on the project including a riparian alternative to using chillers to cool effluent discharges*
- *Mike will coordinate with Kristen Conroy to send the Tribe information on the Swinomish Nation and other R1 environmental education program awards, and to set up a meeting to provide guidance*
- *Mike will coordinate a PPG evaluation workshop update during conference*

- Mike will continue to explore the Healthy Communities Program as a vehicle for other federal agency funding
- Mike will investigate HBM1 member having Suzanne (last name?) present at upcoming conference on sweetgrass sustainability and applying Traditional Ecological Knowledge with western science to produce results
- Mike will investigate use of tribal SRF funds for Houlton infrastructure improvements, and where Houlton is on the state SRF list

#### **Aroostook Band of Micmacs (Chief Charlie Peter Paul, Fred Corey)**

Pesticides funding: Tribe is hosting this year's pesticides workshop in Augusta on Sept 25-26. Tribe is very concerned that program funding for tribes will be in jeopardy after this year.

Wolostog (St. John River) Restoration Project: Chief Peter Paul is interested in participating in the upcoming summit.

Loring Parcel: The Tribe provided an update to its planning efforts regarding alternative energy economic development at the former petroleum tank site. After receiving a grant for a pre-feasibility study from the National Renewable Energy Laboratory, the Tribe applied for and received two subsequent grants from the BIA for additional feasibility studies, including a market study for manufacture and sale of wood pellets. The more recent study will include development of contract language for the construction of a manufacturing facility.

The Tribe remains concerned about the continued presence of PCBs in fish tissue. The Tribe understood that the risk driver for cleanup was sediment levels set at 10 mg/KG PCB. The Tribe understood that PCB levels in fish tissue were expected to be present for 5-7 years, but decline in concentration to background levels in this timeframe, after which the fish would be safe to eat. Fish tissue continues to be monitored, but concentrations have not declined. Tribe explained that since the concentrations have remained steady at the Tribe's parcel, the USAF is considering other locations outside of the Tribe's waters to test fish tissue. The Tribe takes issue with the assumption that public health is protected since fish advisories are posted and the 5-year remedy plan, which focused on sediment concentrations, is believed to be working. The Tribe questions why fish concentrations have not declined and if there is another source of PCBs. Tribe questions if geotextile fabric, which was designed to hold back sediment as part of the remedy, may be compromised by beavers burrowing into the fabric.

*OSRR - Mike Daly*

Maine WQS: Alex provided a brief overview of the status of the water quality standards litigation status.

#### **Action Items:**

- Mike will investigate Tribe's concern regarding tribal pesticides funding for future years.
- Mike will discuss the Loring parcel issues with OSRR

- Cliff Amos, Matt Chavira, Penn Baker, Kate Laine, Ben Kuzawa, Dave Callum
- Sharon Vance, Dave Steadman, Corey Albright
- Joe Belver, Mark W., Todd Siegel
- Also, Leah Swan, Mike S., Mike Knapp

## **EPA Call with Penobscot Indian Nation and Houlton Band of Maliseet Indians**

**7/27/2018**

### **Talking points for Alex Dunn**

(b)(5), Deliberative



(b)(5), Deliberative





7/19/18 - ME re: WQI

3/2/2018

6.78

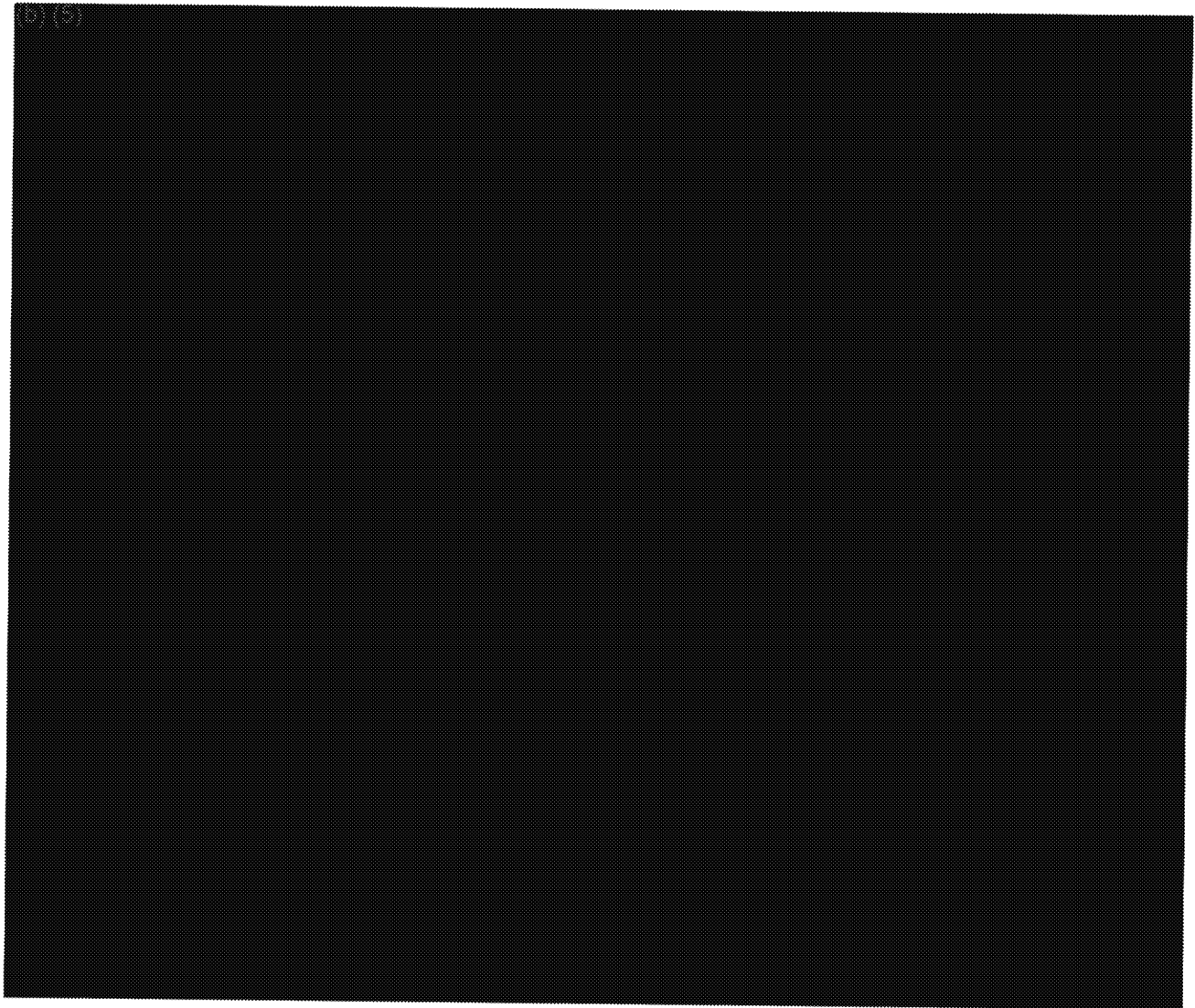
(b)(5), Deliberative



**EPA Meeting with Penobscot Nation and Houlton Band of Maliseet Indians**

**July 13, 2018**

**Talking Points for Alex Dunn**



**EPA – PIN & HBMI Meeting - July 13, 2018**  
*Maine v. Pruitt*, Civil Action No. 1:14-cv-264-JDL  
Dial-In Number: (202) 991-0477 \*\*\* Conference Code: 2598816

**Participants:**

**EPA Region 1  
Penobscot Nation  
Houlton Band of Maliseet Indians**

***EPA Proposed Agenda***

- Introduction
- Opening remarks
  - Regional Administrator Alex Dunn
  - Opportunity for remarks from Tribal Chiefs
- Confidentiality of discussions
- Areas under discussion
  - Fish consumption rate
  - Scope of waters
  - Basis for any future EPA action with respect to sustenance fishing designated use
- Key Issues for the Tribes
  - HBMI key issues submitted on July 3rd
- Schedule for discussions moving forward

7/16/18 - ME review

(b)(5), Deliberative



(b)(5), Deliberative, ACP



3/12/18

Barclay,  
Loren Mann, Kevin Keston, Debbie Myle, Foran, McElroy, Lee Schuman  
Coul, Stephanie Knapp, Ann Williams, Mark — (Carmel), Tina Hopkins-Patry Dwyer  
Siobhan Buck, Terry Reid  
Bryan Kammara, Don Miller, et  
Doree Barker

b)(5), Deliberative

(2)

(b)(5). Deliberative



(b)(5). Deliberative, ACP



7/11/18

(b)(5), Deliberative



**Settlement Meeting #1 - July 12, 2018**  
*Maine v. Pruitt*, Civil Action No. 1:14-cv-264-JDL

**Participants:**

**Maine Department of Environmental Protection and Office of the Attorney General  
EPA Office of General Counsel, Office of Water and Region 1**

***EPA Proposed Agenda (times approximate)***

- Opening remarks (5 mins)
  - EPA (David Fotouhi, Deputy General Counsel)
  - State Representatives
- Overview of agenda (<5 mins)
  - EPA (Steve Neugeboren, EPA Associate General Counsel for Water)
  - Discussion (All)
- Confirmation/clarification of Maine's settlement proposal (5 mins)
  - State Representatives
- Presentation and discussion of desired outcomes, guiding principles and terms of EPA settlement offer (30 Mins)
  - Presentation - EPA (Steve Neugeboren)
  - Discussion (All)
- Description of State's planned legislative and regulatory process for adopting site-specific criteria (State Representatives) (15 mins)
- Next Steps/Preparation for next call (time remaining) (All)



**1. Substantive Terms of Maine's Settlement Proposal (to be confirmed/clarified by State):**

- EPA withdraws its designated use approvals and HHC disapprovals.
- EPA determines that its pre-2004 approvals of Maine's designated uses and HHC apply in tribal waters.
- EPA revokes the federal HHC.
- Maine enacts legislation authorizing DEP to adopt site-specific HHC for sustenance fishing, and adopts through rulemaking and legislative approval site-specific HHC for certain waters running through or adjacent to the Southern Tribes' reservations based on EPA's 142 g/day national default for sustenance consumers.
- EPA approves Maine's site-specific HHC.
- Possible future process to determine FCR for Northern Tribes' waters, including gathering current consumption information.

**2. EPA's Proposed Settlement Offer**

• **EPA's Desired Outcome and Guiding Principles for Offer:**

• **Desired Outcomes:**

- After implementation of the Agreement, site-specific criteria adopted by the State and approved by EPA protective of sustenance fishing for waters in Maine with acknowledged tribal sustenance fishing are the applicable criteria for CWA purposes; EPA approves the States' general fishing designated use and withdraws its 2015 decisions on the State's standards and the federal criteria related to sustenance fishing.
- The settlement is durable - it results in the termination of the current litigation, reduces the likelihood of future litigation or, in the event of such litigation, simplifies and/or reduces the issues to be adjudicated and places both EPA and the State in the strongest posture to successfully defend challenges to State and federal actions under the agreement.

• **Guiding Principles:**

- The settlement provides an opportunity for the State and EPA to shift focus away from past disputes that have resulted in protracted litigation and would likely continue to do so (e.g., interpretations of the meaning of the Settlement Acts and their relevance to implementation of the CWA). Instead, EPA believes the agreement should reflect implementation of the State's and EPA's core authorities and exercise of discretion under the "normal" CWA process. Exercise of those authorities based on the requirements of section 303(c) of the CWA, EPA regulations and analogous State laws and sound scientific rationale will most effectively achieve the public health goals of the governing statutes and regulations, receive deference from the courts and therefore are

most likely to survive any legal challenges to State and federal actions taken pursuant to the agreement.

- State and EPA actions comply with procedural and substantive requirements of the federal Administrative Procedure Act (APA) and analogous State laws, including that decisions are adequately supported by their administrative records.
- The State's and EPA's actions work in tandem to achieve the desired outcomes in a step-wise coordinated fashion through parallel administrative proceedings. As proposed by EPA, this structured process culminates in EPA's withdrawal of prior regulatory actions based upon, and justified by, the State's adoption and EPA's approval of the State's site-specific criteria protective of sustenance fishing for waters currently covered by the federal criteria. A sustainable withdrawal of prior actions therefore entails state adoption of criteria that are geographically co-extensive with the waters currently covered by the federal criteria (i.e., reservation and trust waters for the Northern and Southern Tribes).
- The Agreement contains mechanisms to provide adequate assurance that the State and EPA they will carry out the actions committed to in the Agreement.

- **Proposed Terms:**

- State and EPA actions resulting in State's site-specific human health criteria becoming the approved applicable water quality standards under the CWA protective of tribal sustenance fishing:
  - After enactment of any necessary authorizing legislation and shortly after Maine publishes a proposed rule with site-specific human health criteria based on EPA's national default FCR of 142 g/day for sustenance fishing and a scientifically defensible methodology for deriving human health criteria, EPA proposes withdrawal of its federally promulgated human health criteria for the waters covered by the State's proposed rule;
  - The preamble to EPA's proposed withdrawal rule would state that if Maine adopts scientifically defensible site-specific human health criteria based on a FCR of 142 g/d or greater, EPA will withdraw (1) its prior approval of MIA as a designated use under the CWA; (2) its prior approval of the State's fishing designated use as including an explicit sustenance fishing use; and (3) the Administrator's determination under section 303(c)(4)(B) of the CWA;

- After the State completes its regulatory adoption and legislative approval process and submits approvable site-specific HHC based on a FCR of 142 g/day or greater, and after consideration of public comment, EPA will approve the State's general fishing designated use and site-specific human health criteria, withdraw the federally promulgated HHC for waters covered by the State's site-specific human health criteria, and withdraw EPA's prior use designation approval actions and Administrator's determination (EPA's prior disapproval action would not need to be expressly withdrawn, as it will have been superseded by EPA's approval of the State's site-specific criteria).
- In order for EPA to have a sound and defensible legal and technical basis to withdraw its prior actions in full, the State's site-specific criteria would need to apply to all the waters covered by the current federal criteria (i.e., reservation and trust waters for the Northern and Southern Tribes).

○ Form of Agreement

- Settlement Agreement or Consent Decree, to be determined consistent with policies of the U.S. Department of Justice.
- Case held in abeyance or dismissed without prejudice pending completion of the above actions.

7/11/18 - A/E re: call w/ Polignone

(b)(5), Deliberative



6/21/13 -

County Times -

ME '1 offer -

(b)(5), Deliberative

